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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

FINJAN LLC., a Delaware Limited Liability  
Company,

Plaintiff,

vs.

SONICWALL, INC., a Delaware  
Corporation

Defendant.

Case No. 5:17-cv-04467-BLF (VKD)

**DEFENDANT SONICWALL INC.'S  
NOTICE OF MOTION AND  
ADMINISTRATIVE MOTION FOR LEAVE  
FOR ADDITIONAL PAGES FOR MOTION  
FOR SUMMARY JUDGMENT**

1 **I. INTRODUCTION**

2 Pursuant to Civil L.R. 7-11, defendant SonicWall, Inc. (“SonicWall”) brings this  
 3 Administrative Motion to respectfully request permission to exceed the page limitation set forth in  
 4 this Court’s Standing Order Re Civil Cases, Section IV.A.1, concerning motions under Federal Rule  
 5 of Civil Procedure 56. Specifically, SonicWall requests the Court increase the page limit for  
 6 SonicWall’s opening brief (and, correspondingly, Finjan’s responsive brief) by 10 pages (for a total  
 7 of 35 pages each) and increase the page limit for SonicWall’s reply brief by 5 pages (for a total of 20  
 8 pages). Finjan opposes this motion.

9 SonicWall seeks this increase given the specific issues, previewed below, that should be  
 10 addressed on the ten patents-at-issue, particularly in view of the history of Finjan litigation in which  
 11 summary judgment has proven to be a valuable tool to streamline issues for the jury. The specific  
 12 issues that SonicWall seeks to present in its summary judgment motion are identified below.

13 **II. BACKGROUND**

14 This case involves twenty asserted claims from ten asserted patents: claims 15, 16, 41, and  
 15 43 of U.S. Patent No. 6,154,844 (“’844 Patent”); claims 10 and 14 of U.S. Patent No. 8,677,494  
 16 (“’494 Patent”); claim 9 of U.S. Patent No. 7,058,822 (“’822 Patent”); claim 9 of U.S. Patent No.  
 17 6,804,780 (“’780 Patent”); claim 1 of U.S. Patent No. 6,965,968 (“’968 Patent”); claims 22 and 25  
 18 of U.S. Patent No. 7,613,926 (“’926 Patent”); claims 1, 8, and 14 of U.S. Patent No. 7,647,633  
 19 (“’633 Patent”); claims 11 and 12 (which both depend from claim 1) of U.S. Patent No. 7,975,305  
 20 (“’305 Patent”); claim 1 of U.S. Patent No. 8,141,154 (“’154 Patent”); and claims 1 and 22 of U.S.  
 21 Patent No. 8,225,408 (“’408 Patent”). The twenty asserted claims exceeds the standard of sixteen  
 22 asserted claims set forth in *The Federal Circuit’s Model Order Limiting Excess Patent Claims and*  
 23 *Prior Art*. See Dkt. 56 at 19-20 (adopting Plaintiff’s position for twenty asserted claims).

24 Finjan asserts these ten patents against seven different product groups and combinations of  
 25 product groups: (1) Gateways; (2) Email Security products; (3) Capture ATP; (4) Gateways +  
 26 Capture ATP; (5) Gateways + WXA; (6) Email Security products + Capture ATP; and (7) Capture  
 27 Client + Capture ATP. The Court asked the parties to voluntarily use a “representative product”  
 28

1 procedure in order to simplify the proof, both for trial and summary judgment. SonicWall was in  
 2 favor of this, but Finjan’s proposal did not designate any products whose resolution – one way or the  
 3 other – would be agreed to resolve other products. Following a meet-and-confer in which SonicWall  
 4 requested again that Finjan propose “representative products” whose resolution – one way or the  
 5 other – would then control the resolution of other designated products, Finjan declined.

### 6 **III. ARGUMENT**

7 SonicWall is mindful that the mere number of asserted patents, by itself, is not cause to  
 8 modify the Court’s Standing Order. SonicWall respectfully submits that additional pages are  
 9 justified here because there are seven sets of specific issues that SonicWall intends to raise on  
 10 various patents and product combinations, and because the merits of many of these issues have  
 11 already been confirmed by the granting of at least partial summary judgment by this and other  
 12 Courts. Given the likely success of these issues on summary judgment – and the resulting  
 13 crystallization of the issues for the jury – SonicWall seeks an increase in pages to have a full  
 14 opportunity to brief the issues. On average, the ten-page increase would give SonicWall five pages  
 15 per issue. It still would require extreme efficiency to brief these issues in 35 pages – and, of course,  
 16 some of these issues will take more pages to brief, and some less – but this increase would at least  
 17 make it possible to present these issues to the Court in a manner that is appropriate for resolution.  
 18 This also will avoid a scenario where SonicWall is not able to fairly narrow the issues for trial  
 19 simply because of Finjan’s unusually large assertion of patents and product combinations.

20 SonicWall intends to file a motion for partial summary judgment on the following issues.

21 1. Non-infringement of the ’154 Patent. Regarding SonicWall’s Capture ATP, Gateways,  
 22 Gateways + Capture ATP, Email Security, Email Security + Capture ATP, and Capture Client +  
 23 Capture ATP, Finjan alleges that the “call to a first function (i.e., substitute function)” recited in  
 24 claim 1 is met by functions within the content as it was originally created, not any substitute  
 25 function. This Court granted Cisco summary judgment on essentially this same issue. *Finjan, Inc.*  
 26 *v. Cisco Systems, Inc.*, 17-cv-00072-BLF (N.D. Cal. March 20, 2020), Dkt. No. 499, at 6-11.  
 27 SonicWall thus intends to move on the same issue here.

1           2. Non-infringement of the '633 and '822 Patents. The Court granted partial relief on  
 2 summary judgment motions on issues in both the '633 and '822 Patents in the Blue Coat case, and  
 3 the '633 Patent in the Cisco case. In this case, for all accused products, SonicWall intends to file a  
 4 motion for summary judgment concerning all asserted claims that the product features Finjan  
 5 accuses are not mobile protection code because they do not do runtime monitoring or interception of  
 6 code operations, and concerning claims 1 and 8 of the '633 Patent, and claim 9 of the '822 Patent  
 7 that Finjan has failed to demonstrate the *transmission* of what Finjan alleges is mobile protection  
 8 code. In the Cisco case, the Court noted the transmission requirement is expressly set forth in claims  
 9 1 and 8 of the '633 Patent, *Cisco*, 17-cv-00072-BLF, Dkt. No. 499, at 15. Further, Finjan's  
 10 infringement allegations for claim 14 of the '633 Patent exclusively identify components of Capture  
 11 ATP for all of the claim limitations, and thus Finjan does not actually set forth evidence of  
 12 infringement by the products (e.g., Gateways, Email Security, and Capture Client) that are accused  
 13 in combination with Capture ATP.

14           3. Non-infringement of the '305 and '408 Patents. With respect to the asserted claims of the  
 15 '305 and '408 Patents, Finjan's infringement allegations against Capture ATP, Gateways + Capture  
 16 ATP, and Email Security + Capture ATP span multiple computers despite the claims requiring all of  
 17 the elements to be found within a single computer. *See* '305 Patent, cl. 1 ("A security system for  
 18 scanning content within a computer, comprising: a network interface, housed within a computer...a  
 19 database of parser and analyzer rules corresponding to computer exploits, stored within the  
 20 computer...."); '408 Patent, cl. 1 ("...receiving, by a computer, an incoming stream of program  
 21 code; determining, by the computer...; instantiating, by the computer...; identifying, by the  
 22 computer...; dynamically building, by the computer...; dynamically detecting, by the computer...;  
 23 and indicating, by the computer...."), cl. 22 ("A non-transitory computer-readable storage medium  
 24 storing program code for causing a computer to perform the steps of...."). Finjan also fails to  
 25 identify any evidence of "selectively diverting incoming content from its intended destination to said  
 26 rule-based scanner" being performed by what Finjan identified as the network traffic probe, as  
 27 required by claims 11 and 12 (via claim 1) of the '305 Patent to support its infringement allegations  
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1 concerning Capture ATP. Finjan identifies the “controller server” within Capture ATP as the  
2 claimed network traffic probe, but the controller server does not perform any selective diverting.

3 4. Non-infringement of the '926 Patent. SonicWall intends to move for summary judgment  
4 that Finjan has failed to demonstrate that the accused products (Capture ATP, Gateways + Capture  
5 ATP, and Email Security + Capture ATP) include “a transmitter...for transmitting the incoming  
6 Downloadable and a representation of the retrieved Downloadable security profile data to a  
7 destination computer” as required by asserted claims 22 and 25 of the '926 Patent. Finjan points to  
8 Capture ATP as the component that has the transmitter for transmitting, yet it has failed to identify  
9 any evidence that Capture ATP ever transmits the Downloadable anywhere much less does so with a  
10 representation of retrieved Downloadable security profile data. SonicWall’s motion is case  
11 dispositive for the '926 Patent given Finjan’s failure of proof on this claim element.

12 5. Accusations of infringement by a product combination that was not released until after the  
13 expiration of the '926, '844, and '494 Patents. Finjan accuses a combination of SonicWall’s Email  
14 Security products and Capture ATP as infringing the asserted claims of the '926, '844, and '494  
15 Patents. However, none of SonicWall’s Email Security products were integrated with Capture ATP  
16 until after the '926, '844, and '494 Patents expired. Thus, this issue is ripe for summary judgment.

17 6. Non-infringement based on the “Downloadable” term in the '926, '780, '494, and '844  
18 Patents. Finjan has a number of infringement allegations based solely on SonicWall’s Gateway  
19 products. Claims 22 and 25 of the '926 Patent, claim 9 of the '780 Patent, claims 41 and 43 of the  
20 '844 Patent, and claims 10 and 14 of the '494 Patent all require a “Downloadable” to be received or  
21 obtained. The Court construed “Downloadable” as “an executable application program, which is  
22 downloaded from a source computer and run on the destination computer.” SonicWall intends to  
23 move for summary judgment of non-infringement of these claims because SonicWall’s Gateways  
24 analyzes individual internet protocol (“IP”) packets as they pass through the firewalls, without ever  
25 reassembling the data carried by those IP packets into a file (unlike most gateway products in the  
26 marketplace sold by other vendors). An IP packet by itself – i.e., the thing that SonicWall’s  
27 Gateways actually analyze – is not executable. Conversely, a file (which is comprised of data  
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1 extracted from multiple IP packets) cannot be executed without the file first being reassembled,  
2 which SonicWall's Gateways do not ever do. Consequently, SonicWall's Gateways do not receive  
3 and/or obtain a Downloadable, i.e., "an executable application program, which is downloaded from a  
4 source computer and run on the destination computer," as required by the asserted claims and the  
5 Court's relevant claim construction.

6 7. Damages issues. Finally, SonicWall intends to file for summary judgment on certain  
7 damages-related issues that impact all of the accused products. Damages-related issues were  
8 presented (and granted) in the Cisco case, thus dramatically limiting Finjan's damages claims.  
9 *Cisco*, 17-cv-00072-BLF, Dkt. No. 499, at 32. This was also the basis for partial summary judgment  
10 in *Finjan, Inc. v. Juniper Networks, Inc.*, No. 17-cv-05659-WHA (N.D. Cal. May 8, 2019), Dkt. No.  
11 491, at 18.

12 Good cause exists for increasing the page limits for SonicWall's motion for summary  
13 judgment in this case given the number of asserted claims, asserted patents, and accused products.  
14 An adequate discussion of the accused products and relevant undisputed material facts cannot be  
15 fully developed in the 25 pages set forth in the Court's Standing Order. Defendant's request  
16 includes an equal increase in the number of pages for Plaintiff's responsive brief to ensure they are  
17 not prejudiced by this request.

#### 18 **IV. CONCLUSION**

19 For the foregoing reasons, SonicWall respectfully requests the Court to increase the opening  
20 and responsive briefs for its motion for summary judgment under Federal Rule of Civil Procedure 56  
21 by 10 pages (for a total of 35 pages) and increase the reply by 5 pages (for a total of 20 pages).  
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Dated: November 12, 2020

Respectfully submitted,

/s/ Nicole E. Grigg

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Case No. 5:17-cv-04467-BLF (VKD)

**[PROPOSED] ORDER GRANTING  
DEFENDANT SONICWALL INC.'S  
NOTICE OF MOTION AND  
ADMINISTRATIVE MOTION FOR LEAVE  
FOR ADDITIONAL PAGES FOR MOTION  
FOR SUMMARY JUDGMENT**

Before the Court is Defendant SonicWall's Administrative Motion for Leave for Additional Pages for Motion for Summary Judgment. The Motion is hereby **GRANTED** for good cause shown and based on the grounds set forth in Defendant's Motion. It is hereby **ORDERED** that SonicWall's opening brief in support of its motion for summary judgment under Federal Rule of Civil Procedure 56 shall not exceed 35 pages, Finjan's responsive brief shall not exceed 35 pages, and SonicWall's reply brief shall not exceed 20 pages.

**IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Beth Labson Freeman  
United States District Court Judge